

joke, would you say. With all the new legislation, one might assume everything on the Internet is monitored.

Q. I mean to your knowledge has the Secret Service monitored your e-mails from time to time?

A. Not to my knowledge without our handing it to them, without us faxing them a copy of the e-mail.

Q. Have you ever, when they've made threats on your life, have you given it to any other like local law enforcement?

A. We have given some of the threats on ourselves to the local FBI office, and they don't really care.

Q. Nice guys. Don't feel neglected. People out here have trouble getting them to care, too.

Who are the officers of ProBush.com, Inc.?

A. Michael Marino, my brother, and myself, Ben Marino.

Q. I forgot to ask Michael this. Who is the President?

A. Michael is the President, and I would be your CFO or COO.

Q. You don't hold any like treasurer or anything

them. Right?

A. I wouldn't call it support. I think they're more interested in riding off any coattails or any waves we were to make. I don't think they're overtly intent on helping us, rather than following any kind of publicity we could get.

Q. I see. Have you talked to Mr. Gannon?

A. I have never spoken with Mr. Gannon personally.

Q. Do you know that he used to be involved in Republican party politics before?

A. I would say it doesn't surprise me in the least, but I did not know that.

Q. Have you ever received any in kind or other support from politicians or political organizations?

A. I'm sorry, can you repeat the beginning?

Q. In kind or other kinds of support other than financial?

A. In kind?

Q. That's like an in kind donation, like giving you advertising space for free, website space for free.

A. At most, maybe when there was correspondence

like that?

A. No.

Q. You own 49 percent?

A. That's correct.

Q. Have you guys ever thought about issuing shares and selling them?

A. We have not thought about that.

Q. How is ProBush.com funded?

A. In the beginning it was funded from our own pockets. As it began to generate some revenue, all the revenue went back in to pay for the expenses of the company. From time to time, especially after this trip, we'll probably have to put some of our own money back into it.

Q. To your knowledge has ProBush.com, the corporation or the website, or you two individually, you and Michael, received financial support from any politician or political organization?

A. Not to my knowledge. That could pretty much be accepted as fact, because we would be the ones receiving, and we have not received any money.

Q. I don't know if you would consider the Free Speech Foundation to be a political organization, but you do get some support from

with some other webmasters that my brother had on the Internet, and he was expressing to them what was going on, and they told -- you know, some of the liberal websites expressed that they were disappointed in the lawsuit, because it infringed on their free speech, as well, even if they shared similar opinions as the parties who are opposed to us. I think they might have put a link up and just a little brief. I think Antiwar.com might have did that for us. If there were any others, I wouldn't really be aware of them. I remember that was the one he mentioned to me. That would be the only kind of thing I could imagine.

Q. I want to ask you, remember Michael talking about this Amazon affiliate link. He said you handled all that. What's that all about?

A. Amazon has this program on the Internet, which basically -- I'm not even sure what it's called. I forget what it's called. It's a way for website publishers to collect money to keep their websites running. It's not really meant to be political or charitable or anything like that.

You put a thing on your site, and you can

Exhibit 2

Page 17

customize what you want it to say. You can say, "Help me, I'm poor. Please help me keep my website up." You can say, "We're getting sued by another company trying to steal our domain name. Help us." You can solicit money in any way you wish.

Our way to solicit money was, "Help us. We're in a lawsuit. Please donate money if you have any available."

Q. So is Amazon the host for that? I'm not quite following.

A. Amazon, keep in mind that Amazon is one of your larger Internet companies, so they're involved in everything, books to electronics, even to affiliate programs, which he was speaking of before.

When you are an Amazon affiliate, you know, I don't think we do it anymore, but say we were to sell a book on our site about President Bush. The link would go directly to Amazon when someone clicked on that, and our code would be embedded in the next page so we got credit for the sale.

So mostly Amazon does like link tracking and code tracking for affiliates and stuff like

Page 18

that to make sure people are getting paid on their own referrals. This thing is just a totally different obscure program that they have to allow you to collect.

The point of it was that Amazon is a trusted company. So when I ask you for money, you're going to feel more comfortable giving it to Amazon than just giving it to me. Rather than just giving it to me, and you don't know what's going on. They are more of a trusted intermediary, almost like some sort of escrow.

Q. Do they then charge you a fee for collecting?

A. Yes.

Q. How much?

A. There's a small percentage.

Q. Like three, five percent, somewhere in there?

A. Something like that. One of the other things, now that I'm remembering more about it, I think they do receive -- when they donate the money through Amazon to us, they receive some sort of Amazon financial credit. Like if they donate \$20, I think they get like a \$5 gift certificate for the website. It's something along those lines.

Q. So, for example, when you talk on your website

Page 19

and ask them for support in this lawsuit, would Amazon be the ones handling that, too, if people made contributions?

A. That is where the contributions are going. I'm actually not familiar with if the money goes to Amazon or if it's been moved to our bank account. I think there's a certain period of time that it has to be cleared before it can be deposited in our bank account. It is all electronic.

Q. They do it like monthly or something?

A. I really have no idea.

Q. Do you check that bank account from time to time?

A. Our bank account we check from time to time. I'm not aware of any transfers from Amazon in the recent six months to a year. The last time I looked on Amazon it was a couple hundred dollars. It just said like two hundred some dollars, and it shows like our goal and a little thermometer across the side.

Q. So you can look on some site on Amazon where you can look at that and see how much you've made?

A. Right. In fact, I think it's still on our

Page 20

site. You can click that link on our site, and it will go to that Amazon page.

Q. Okay. I'll take a look at it. Have you ever received any financial or any other kind of support from -- let me just give you a list here. Okay?

A. Sure.

Q. You can say yes or no to each one. President Bush.

A. No.

Q. The Bush administration.

A. No.

Q. Bush campaign.

A. No.

Q. Republican party.

A. No.

Q. Any talk show host?

A. No.

Q. Any public figures of any kind?

A. No.

Q. You heard Michael's answers earlier about your financial, your bank accounts and your records and so on. Do you recall that?

A. Uh-huh. Yes.

Q. Do you disagree with anything he described?

Benjamin Marino

Consent:

Page 25

Page 27

1 your web page come up?

2 A. I would say it definitely would come up,
3 probably on the first page.

4 Q. That would be because?

5 A. Honestly, because of any other sort of relevant
6 media attention that the lawsuit received. The
7 fact that there are other articles on the web
8 that put the two words in the one document, the
9 fact those two words are also in one document
10 we have, will make it more likely to come up.

11 But beforehand, before the lawsuit and
12 before there was publicity or articles being
13 written about it, you could type up anyone on
14 the list and their name, and it was unlikely
15 they would come up.

16 Q. Now, Michael talked about this. Is he known as
17 Mike or Michael?

18 A. It depends on how you're dealing with him.

19 Q. Michael said you sell merchandise. Is it your
20 opinion, too, that you're not making any income
21 off of sale of the merchandise? You're just
22 breaking even?

23 A. If that. Like I said, after expenses,
24 especially for hotel room the last couple of
25 days, that's going to put us in the negative,

1 A. No, I have not.

2 Q. How have you been able to pay for the cost of
3 this lawsuit so far?

4 A. I believe that's privileged.

5 Q. I mean other than to your lawyer. I mean it
6 cost you to fly out here, didn't it?

7 A. It did.

8 Q. How did you pay for that?

9 A. I'm sorry, it didn't cost us to fly. We drove
10 out here.

11 Q. How did you pay for that driving?

12 A. We paid for that with our own money, and the
13 room here in Sioux Falls was paid for by the
14 company.

15 Q. Which company?

16 A. ProBush.com.

17 Q. So it would be like considered a business
18 expense?

19 A. Yes.

20 Q. As a matter of fact, the whole trip can be a
21 business expense.

22 A. Yes, it can be, but we don't want to take it
23 all out of the business, because there's not
24 enough in there. So, again, we put our own
25 money up.

Page 26

Page 28

1 so we'll have to put in our own money.

2 The sale of merchandise month to month is
3 about enough to pay for the bandwidth for that
4 specific month. There's been times, like right
5 around the election, where traffic was through
6 the roof, and it cost us an arm and leg just to
7 keep the site running, because people kept
8 going to the Traitor List, the pages.

9 Every time one of those pages loads, it
10 costs us money. We're paying -- it might cost
11 a fraction of a cent, but if 20,000 people
12 over the course of a couple weeks load it and
13 load all 150 some pictures, we're paying for
14 that.

15 Q. And you pay that to your domain?

16 A. To GoDaddy.

17 Q. By the way, do you -- the apartment you live
18 in, do you own that or rent it?

19 A. We rent.

20 Q. Has your parents homeowner's insurance been
21 covering any of your defense?

22 A. No, it has not.

23 Q. Do you have any -- have you found any insurance
24 coverage you have that's helping to pay for
25 your defense in this case?

1 Q. For those kind of costs, has anybody made any
2 promises to you they would reimburse you for
3 those or pay any verdicts or settlements?

4 A. No.

5 Q. Do you know who the Federalist Society is?

6 A. I do not know who the Federalist Society is.

7 Q. To your knowledge have you ever purchased
8 advertising for ProBush.com anywhere other than
9 on your own website?

10 A. I can't specifically remember at this time. By
11 the same token, I find it strange we wouldn't
12 have at one time gotten advertising somewhere.
13 Most of the time what you wind up learning is
14 advertising on the web has no results. I think
15 we probably paid for maybe 10,000 hits here or
16 there. You go in one of those traffic
17 websites, and they'll sell you 10,000 hits.
18 They start sending traffic. When it hits
19 10,000, it's over. If anything, just that.

20 Q. Have you ever contributed content to the
21 website?

22 A. Yes.

23 Q. What kinds of things are you responsible for on
24 the website?

25 A. For a while I was running the newsletter, which

njamilia Marino

CONFIDENTIAL

January 17, 2005

Page 29

Page 31

we're not really following up on anymore. Kind of lost interest in it.

Q. So you don't have a newsletter anymore on the website?

A. We can put one in any day.

Q. But not right now?

A. It's just been procrastination things. Other than that, we both kind of share in the ideas. I don't know if anything specifically is my idea. I mean there's plenty of stuff in there that is specifically my idea, but I couldn't tell you which one it is unless we went over every item.

Q. You were an Independent before, and now you're a Republican. I mean is it your sense that there's more Republicans than Democrats in the United States right now?

A. That would be difficult to gauge. I would have to agree with you. There are probably more Republicans than Democrats.

Q. So business is better if you're a Republican right now than if you're a Democrat?

A. Yes.

Q. Does that have anything to do with the politics of your website?

1 A. I would guess it came from Google.

2 Q. But you don't know what site that may have come from?

3 A. No. Google will offer you a reference at
4 times, but everything has become very diluted
5 on the Internet. Pictures are posted 10 times
6 and then 10 times somewhere else, and the same
7 picture goes around all over the web.

8 Q. You've never paid for any of that usage of that
9 photograph or image of him?

10 A. That's correct.

11 Q. Why did you include Senator Abourezk on the
12 Traitor List?

13 A. Simply because he signed his name to the Not In
14 Our Name Petition.

15 Q. At the time you put him on there, did you
16 believe he committed treason, as we defined in
17 the Complaint, against the United States of
18 America?

19 A. I did not.

20 Q. Have you ever believed that about Senator
21 Abourezk?

22 A. No.

23 Q. To your knowledge has he ever been charged with
24 or convicted of being a traitor to the United
25

Page 30

Page 32

A. I'm sure on some level it does. It's always better to sell what's popular if you're trying to get some attention. Why sell an unpopular product?

Q. If Kerry had won, what would that have done to the ProBush.com?

A. We also own ProKerry.com. We were ready to unload that in the event he became elected President.

Q. So entrepreneurship before party politics?

A. As long as the country is still capitalist.

Q. Now, I need to ask you this series of questions. I asked Michael about it.

Before you developed the Traitors List, did you do any research on the individuals you listed on the Traitors List?

A. I personally did no research.

Q. Do you know if Michael did any?

A. None besides collecting their images off Google.

Q. Did you pay for any of those images you collected off Google?

A. No, we did not.

Q. For example, the Senator Abourezk image, do you know where you got that from?

1 States of America?

2 A. Not to my knowledge.

3 Q. Now, has -- he was talking about a distinction
4 between webmaster and domainer.

5 A. Domainer.

6 Q. Domaining?

7 A. Domaining. I am a domainer.

8 Q. You're the domainer. What's that mean?

9 A. Basically I buy and sell domain names, whether
10 they be fresh registrations, as in a name
11 that's never been registered before, or if I
12 pick up an expired registration, which was
13 someone else's website. They built the whole
14 website and lost interest in it and let it
15 expire, at which time I would collect it, pay
16 or either take part in an auction. Or if no
17 one else wanted it, I would take it myself. It
18 generates traffic which generates money.

19 Q. If you hold those long enough, the person whose
20 name might be closest to that might want to buy
21 it from you at some point?

22 A. Typically, no. You don't try to engage in that
23 kind of activity. That's cyber squatting.

24 Q. That's where you steal somebody's name and sell
25 it back to them for more?

Benjamin Marino

Continued:

Page 33

- A. That's correct.
- Q. You don't want to do that?
- A. No. In fact, there's been instances where I have picked up a name, and the person has wanted it back, and they have to approach me, at which point I generally give it back to them for a reasonable cost, for time and fees, just for the money I paid to get the name.
- Q. Do you know anything about whether your pages are archived from time to time?
- A. As far as I understand, they are not or ever were archived.
- Q. You don't know if GoDaddy archives it at all?
- A. I do not believe GoDaddy archives it.
- Q. What were the reasons you felt -- I heard Michael's reasons. Why did you develop the Traitors List, or why were you involved in that?
- A. Traitor List is a parody. May not have been clearly defined in all points. If you're familiar with what a parody really is, the bottom line is if you would imagine all of these individuals and how they feel towards the government and the Bush administration, the parody is on them as if to say that this is how

Page 34

this group of people feels the government is becoming, as if to say they believe more that they're likely to be rounded up than we do.

That's where the parody lies. That it would more be something that they would concoct in their own mind. Thus us giving, leading it to being a parody of them.

- Q. I'm trying to follow that. That's a complex explanation.
- A. It is complex. A lot of the website is very deep with deep meanings like that that are a parody of a parody, or a parody with some other different undertones, which are a lot of, again, where I add to the website as opposed to my brother. So I go into some of the more finer things like that, and then he puts it up.
- He's not as familiar with the concept of parody and what the Traitor List parody actually means as I am, because I really --
- Q. For example, Saturday Night Live will do parodies of all kinds of things, like President Bush to Kerry, and they're making fun of something that's already occurred in a sense. Right?

Page 35

- A. Correct.
- Q. What website or what are you parodying with the Traitors List? What are you making fun of there?
- A. The parody is the overall tone of the left or liberal media and/or reaction to the Patriot Act, complaints of rights being squelched or squashed, washed away, and the whole point of people expressing that they are dissenting, although they're at the same time fearful their dissent will lead to their own persecution, or something along those levels.
- Q. And you don't believe that to be true, so, therefore, you're parodying it?
- A. Exactly.
- Q. You never heard Senator Abourezk, for example, say anything negative about President Bush, other than signing on to that Not In Our Name Petition?
- A. That is correct.
- Q. Did you perceive that to be negative?
- A. The tone of the petition, yes.
- Q. Towards President Bush.
- A. Yes.
- Q. Was there anything else offensive about it?

Page 36

- A. The overall tone of the petition struck to me that we're at a juncture where people kind of feel the need to not respect the President at the same time they dissent from him.
- I just felt like they didn't have to necessarily be mutually exclusive events. One can dissent and still respect the office of the President.
- I thought the Petition was, indeed in bad taste, and I believe those are my words, not my brother's, that the petition was made.
- Q. Was the Not In Our Name Petition treasonous against the United States?
- A. Not at all.
- Q. Other than that one petition, was there anything else that Senator Abourezk ever did that drew your ire at the time you put him on the Traitors List?
- A. No, there was not. In fact, he was in our mind, we knew nothing more about him than we knew about the 140 other people that had signed the Petition who were in the limelight, so to speak, the ones who signed it, endorsed it, and got the other members of the public to sign it, also.

njamin Marino

Continued.

Page 37

Page 39

Q. Now, you remember receiving the e-mail, and then the legal letter after that from Mr. Epp asking you to take his name off the list. Do you recall that?

A. I do.

Q. You were around when that came. Correct?

A. Yes.

Q. Michael talked to you about it. Right?

A. Yes, he did.

Q. Did you feel as strongly about not taking him off as Michael did?

A. My reasoning for not taking him off was at the time the Senator had already escalating it by sending us a cease and desist to a legal level. If we were to remove him and issue an apology and pay him money, it would certainly lead the way for the breakdown of the rest of our site, and others would surely follow.

We do feel we legally are in the right. But the fact it was kicked off on a legal aspect and not a simple request.

Q. Got you mad?

A. Not mad. It got us careful.

Q. You were afraid it would open the flood gates.

A. I do understand the legal implications of

Page 38

precedent.

Q. You were afraid he would open the flood gates and get more lawsuits or whatever.

A. Exactly.

Q. Did you feel like you were sort of holding up a standard for other Internet sites, as well, or were you more defending your own position?

A. We may well have been, but that wasn't our motive at all. It was strictly keeping in focus with what best we would need to do to protect ourselves and our rights.

Q. So even if you, for example, signed some sort of settlement agreement or whatever, you were still concerned about opening the flood gates?

A. Right, as far as any kind of public sentiment would have gone.

Q. Did you have money to pay for what he asked for initially, that \$2500?

A. No.

Q. Or \$2000.

A. We did not have it.

Q. You would agree with me that Senator Abourezk sufficiently communicated he didn't want to be

on the list. Correct?

A. Yes.

1 Q. I mean you've sat in here, I think you sat in
2 on his deposition yesterday.

3 A. Yes, that's true.

4 Q. You've seen him today?

5 A. Yes.

6 Q. Does he seem like a bad guy to you?

7 A. I could say honestly I like the guy. Seems
8 like a very nice guy.

9 Q. Do you still feel as strongly about not taking
10 him off the Traitor List after having spent the
11 last two days with him?

12 A. We actually discussed --

13 MR. PARSON: Don't get into any
14 attorney-client communication.

15 A. Right. As far as taking him off goes, if it
16 was my personal opinion at this point, I would
17 gladly take him off. I don't have anything
18 against the Senator. I think he's a great
19 man. I liked listening to him yesterday. I
20 thought he had some interesting stuff to say.

21 MR. PARSON: Also, for the record, we
22 offered to take him off and issue some sort of
23 an apology in exchange for dropping the
24 lawsuit. It was rejected by your side.

25 MR. ABOUREZK: To the extent that

Page 40

1 addresses settlement negotiations, I would
2 object and move to strike that last comment.

3 Q. I think you indicated when you talked to South
4 Dakota Public Radio, that in hindsight you
5 thought "traitor" was a strong word.

6 A. Yes, it is a strong word.

7 Q. Do you still feel that way?

8 A. Yes, I do.

9 Q. You've made the statement before that, "We
10 don't believe that these people are traitors to
11 the United States. There is no traitorous
12 activity on their behalf." True?

13 A. True.

14 Q. You basically said that about all the people on
15 the Traitors List, didn't you?

16 A. That is correct.

17 Q. That was true of Senator Abourezk, as well?

18 A. Yes, it was.

19 Q. You told Joan Russell and South Dakota Public
20 Radio, you agreed you had called him a traitor
21 on the web page?

22 A. I believe the web page speaks for itself.

23 Q. So that's a yes?

24 A. As far as the website does say Traitor List,
25 does not single Senator Abourezk out, though.

Benjamin Marino

Page 41

Page 43

Q. At the time you put Senator Abourezk on the Traitor List, you knew he wasn't a traitor. True?

A. That is correct.

MR. PARSONS: I'll just object as ambiguous. The answer stands.

Q. You probably heard me ask Michael about this earlier. At the time you first, maybe in the first year you put this on the website, there was a lot of fear in our nation after the World Trade Center attack. Right?

A. I would say there was definitely fear across the nation.

Q. And fear of further attacks. Correct?

A. Yes.

Q. A lot of suspicion of individuals during that period of time?

A. I don't know if I would say a lot of suspicion towards individuals in general, no.

Q. The FBI got, we know from the press, they got a lot of reports on people that other people thought were suspicious. Right?

A. To my knowledge, there were no witch-hunts, if that's what you're asking.

Q. I'm not asking about witch-hunts. I'm talking

1 were out buying duct tape and plastic for their
2 homes. Correct?

3 A. That is correct.

4 Q. We know at least the climate of fear extended
5 up until a year ago.

6 MR. PARSON: Object as ambiguous. Go
7 ahead.

8 A. That's correct.

9 Q. For example, you're familiar with the country's
10 reaction to Japanese Americans in World War II
11 during the war.

12 A. I am.

13 Q. Being accused of being Japanese American today
14 has far and fewer implications than during
15 World War II. Correct?

16 A. It's kind of hard to accuse someone of being an
17 ethnicity. They are or they aren't. I really
18 couldn't follow that question.

19 Q. But being implicated as being Japanese
20 American. Let me say it that way.

21 A. Well, you are or you aren't.

22 Q. It has far fewer implications today than it did
23 back then in World War II. Right?

24 A. It has fewer implications to be a Japanese
25 American today than it did then.

Page 42

Page 44

1 about the general atmosphere of suspicion.

2 A. I would agree up to the point there were not
3 witch-hunts.

4 Q. Would you agree with me that calling somebody a
5 traitor during that period of time would have
6 been a more serious allegation than it would be
7 today when we've kind of relaxed ourselves a
8 little bit more?

9 A. No. I really don't.

10 Q. Why not?

11 A. I believe at the time, in fact, more so then
12 than now, the term "traitor" was just a popular
13 term being thrown around, whether it be in the
14 media, public circles, and I do not believe the
15 Traitor List was actually published until
16 sometime late 2002. So we're talking a whole
17 year and a couple odd months past that.

18 I believe that's -- in addressing your
19 question, I would say if we had thrown up
20 Traitors the day of September 11, maybe there
21 would be a little more serious, but we're
22 talking a year and probably a couple months
23 afterwards.

24 Q. It was only a year ago that Tom Ridge moved us
25 up to the orange level of alert, and people

1 Q. I guess my whole point is in an atmosphere of
2 fear and suspicion that we talked about, even
3 up until a year ago, to be called -- to call
4 someone a traitor is a highly charged word or
5 set of words.

6 A. It is a strong word, and there is a lot of
7 strong rhetoric permitted in the United States.

8 Q. You published this website because you
9 supported President Bush. Right?

10 A. I published this website because there was a
11 niche for support for President Bush.

12 Q. So you are looking at it more from the business
13 angle?

14 A. That's correct.

15 Q. Would it be fair to say you wanted to stifle
16 some of the criticism of President Bush by
17 publishing the Traitor List?

18 A. Personally, no.

19 Q. Was it only your brother that felt that way?

20 A. Possibly. That would have to be addressed by
21 him. I mean I don't know.

22 Q. So you didn't have any political --

23 A. Very little. I am not very politically
24 motivated here.

25 Q. So as far as you're concerned, the Traitors

Benjamin Marino

Page 45

List was not intended to back off critics of President Bush?

A. That's correct.

Q. If I remember right, on the South Dakota Public Radio, you indicated you believed you were doing the right thing by leading this country to the next phase, which is very stern patriotism, putting that in quotes. Is that correct?

A. Yes.

Q. What do you mean by stern patriotism?

A. Basically allegiance to the country and its policies and reflecting within the country reasonable and acceptable dissent and voices and argumentative speech, but stepping outside of the country, very important to stand as one to the rest of the world.

Q. Was the Traitors List a part of that stern patriotism you were talking about?

A. Again, the Traitors List reflected the parody I mentioned earlier.

Q. I understand that you made that your position in this lawsuit. But is the Traitors List a part of the stern patriotism you were describing on South Dakota Public Radio?

Page 46

A. No. The Traitor List has nothing to do with stern patriotism.

Q. Are you aware the Nazi party in the '30s, in their rise to power in Germany, used to call for stern patriotism?

A. No, I'm not aware of that.

Q. Would you agree with me that Nazi ideals are repugnant to the ideals of American democracy?

A. Yes, I would absolutely agree with that.

Q. You don't embrace those ideals, do you?

A. I do not.

Q. Have you ever been in contact with any of the bloggers or others who run political websites either here in South Dakota or elsewhere?

A. No.

Q. Regarding this lawsuit?

A. No.

Q. Regarding the Traitors List?

A. Correspondence, me, directly?

Q. You or your brother, Michael, to your knowledge.

A. To my knowledge, no.

Q. Based on your definition of parody, is it supposed to be funny?

A. Based on my definition? It's supposed to be

Page 47

amusing.

Q. You would agree with me that as far as you know, it's not -- that parody of Senator Abourezk hasn't been amusing to him.

A. I do understand that. I would hope that -- I'm sorry to hear that, that it wasn't as amusing to him as it was to others. All in all, most found it amusing.

Q. Are you the person who -- do you remember that exhibit I showed your brother? Exhibit 16. Are you the person that arranged to sell that space on your website?

A. This is not from our website.

Q. I copied that from a page in your website.

A. No. There's the web address right there. It's not.

Q. It was a link from your website.

A. Links leave the website.

Q. I hit it once. It was right in the middle of your website and that came up. Are you aware you were selling space for psychic and pornographic website on --

A. We signed up for the affiliate program for the psychic, and I actually wasn't aware of this page that goes there. We were selling

Page 48

psychic. We just thought it was amusing to put a psychic link up. No idea it had anything -- Live Video Chat. Again, it's not our website, so we're not responsible for that content.

Q. Even though you get there from your web page?

A. You can get to a lot of web pages from a lot of other web pages, and they're not responsible.

Q. Are you going to try to take that off your website, now that you know about it?

A. I might try to take -- try to find out if they have a purely psychic, something just for psychics. I do not want our visitors going to see live videos.

Q. You're going to have to do some research?

A. Yeah. I don't even know where that comes from.

Q. To your knowledge how much does it cost to keep the website going right now? What's your estimate?

A. Upwards of a couple hundred dollars a year.

Q. Again, I'm not talking about lawsuit costs or anything like that. Just do you anticipate it costs you more than that, more than a few hundred dollars a year?

A. No, unless there's an extreme explosion of

Page 45 - Page 48

njamin Marino

Page 49

bandwidth. I mean right now we're ranked somewhere around 200,000 as far as all the websites on the Internet go. They keep track of websites from like one to three million. We're somewhere in the 200,000 range, which is decent. If we were to move up to the below 100,000 range, between 1 and 100,000, that would definitely cost a lot more money.

Q. Would your answer be the same as your brother's as to why Jane Fonda and Roxanne Dunbar-Ortiz were added to the list, if you recall?

A. The list? I'm sorry, I thought you meant the lawsuit. They were added because they also signed the Not In Our Name.

Q. You also agree with your brother that initially the disclaimer was on the last page of the website?

A. It was at the bottom of the Traitor List.

Q. Twenty-four pages in basically. Right?

A. Scrolling.

Q. Are you planning on calling any expert witnesses in this case?

A. I have no idea.

MR. PARSONS: I object to the extent that would call for any communications with your

Page 50

attorney.

MR. ABOUREZK: He answered he has no idea, anyway.

MR. PARSON: Okay.

Q. Have you ever talked with this Professor Vololch?

A. No, I have not.

Q. Have you ever appeared on any television or radio programs, other than South Dakota Public Radio, about this lawsuit or the Traitors List?

A. No.

Q. And you were on that call-in program, when was that, the summer of 2003? Is that correct?

A. I believe so, if you're talking about the one where Mr. Epp was, also.

Q. Yes. I'll show you what's been marked Exhibit 8. Take a look at that, if you would. I'll represent to you that's a transcript of the radio program you were on.

A. Okay. This is it.

MR. PARSON: I'll object to the extent it assumes facts not in evidence regarding the complete accuracy of the transcript.

MR. ABOUREZK: I'll go ahead and offer that as an exhibit to your deposition.

Page 51

1 Q. Then, if you would, take some time and look at
2 it. If you see any inaccuracies, would you
3 report those to your attorney, and he could
4 provide those to me?

5 A. Sure.

6 Q. It will be a attached your deposition, so
7 you'll get a copy of it.

8 Was it your idea to put the disclaimer on
9 the website?

10 A. Yes, it was.

11 Q. What prompted that?

12 A. Like any business or organization that protects
13 itself. It was there basically for the same
14 reason. I'm familiar with the Larry Flint and
15 Hustler information, and I used that exact
16 wording.

17 Q. From Hustler?

18 A. From Hustler, which was found to be acceptable
19 by the, I believe the Supreme Court.

20 Q. Did somebody provide that to you?

21 A. No.

22 Q. Another website?

23 A. No. I took that myself.

24 Q. From the Hustler site?

25 A. Not from the Hustler site. Just I knew from

Page 52

1 the movie, from reading about it, from seeing
2 the inside of Hustler, that it says, "Parody,
3 not to be taken seriously."

4 Q. Now, if you -- it must not have been an obvious
5 parody, if you felt you had to put a disclaimer
6 in it.

7 A. That's not necessarily true. The disclaimer is
8 just there for general protection. It's
9 obvious with or without the disclaimer in my
10 mind.

11 Q. Other than Hustler, have you ever seen a
12 disclaimer in any other parodies, either on a
13 website or in print?

14 A. Plenty of times. I can't recall specifically.
15 I think Spy used to do it, Spy Magazine, used
16 to have parodies all the time. It would say,
17 "Parody, not to be interpreted," blah, blah,
18 blah. Some similar statement. I specifically
19 chose the one from the Larry Flint case,
20 though.

21 MR. ABOUREZK: I think I'm just about
22 done. I'm going to consult with my co-counsel
23 here.

24 (A recess was taken)

25 Q. One last question or two. I just want to

Case 4:03-cv-04146-LLP Document 48-3 Filed 07/06/05 Page 10 of 11 PageID #: 1096

Case 4:03-cv-04146-LLP Document 48-3 Filed 07/06/05 Page 11 of 11 PageID #: 1097